

Memorandum

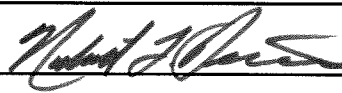
TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: David Sykes

**SUBJECT: ACTIONS RELATED TO THE
UNITED STATES PATENT AND
TRADEMARK OFFICE PROJECT**

DATE: July 23, 2014

Approved



Date

7/30/14

RECOMMENDATION

Adopt a resolution:

- (a) Approving the final rankings of the four (4) prequalified design-build (D/B) firms that responded to the Request For Proposals (RFP) for the United States Patent and Trademark Office (USPTO) Project (Project); and
- (b) Authorizing the Public Works Director to negotiate a D/B contract for the Project as follows:
 - (1) Begin negotiating with the highest ranked D/B firm, Turner Construction Company; and
 - (2) Begin negotiating with the next highest ranked D/B firm, Hensel Phelps Construction Company, if after having negotiated with Turner Construction Company, the Director determines that the City's interests are best served by beginning negotiations with the next highest ranked D/B firm; and
 - (3) Begin negotiating with each of the other D/B firms in order of their ranking as the Director determines is appropriate.

OUTCOME

Council approval of the final ranking and authorization to the Director of Public Works to negotiate with the D/B firms as described in this memorandum will allow the development of a D/B contract for the Project.

EXECUTIVE SUMMARY

Four high-quality firms were prequalified to submit proposals for the project. All four prequalified firms responded to the RFP and were evaluated by the criteria approved by Council on May 20, 2014. A selection panel comprised of diverse stakeholders evaluated the proposals and the following is the outcome of the ranking based on the aggregate of the panelist's scores.

Proposer	Ranking
Turner Construction (with Gensler Architects)	1
Hensel Phelps Construction (with Fentress Architects)	2
Hunt Construction (with Steinberg)	3
C. Overaa Construction (with RMW Architects)	4

Upon Council approval of the final ranking, staff will enter into contract negotiations with Turner Construction Company. This contract will specify the schedule, cost and scope of the two project tasks:

- 1) Tenant improvements associated with the USPTO offices (~ 37,000 sf)
- 2) City staff relocation improvements and move management in the Tower and other locations

In the event the Director of Public Works determines that the City and Turner Construction Company are not making adequate progress on the negotiations of the contract, staff recommends that Council authorize the Director of Public Works to commence negotiations with the next ranked proposers in the order of their ranking.

The current schedule provides for staff to return to Council in September 9, 2014, for approval of the D/B contract with whichever of the D/B entities the City is successfully able to negotiate an agreement.

BACKGROUND

On May 20, 2014, Council approved preliminary findings that using D/B would save time and money over a traditional design-bid-build project and authorized advertisement of the RFP. Based on that action, staff has developed a more specific schedule to move through the RFP process. As of today, each milestone has been met and the procurement process is on schedule.

The following is a recap of the schedule:

- May 20, 2014 Approval of the RFP and Advertisement
- July 14, 2014 Due Date for RFP

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|--------------------------------|--|
| • July 15 to July 22, 2014 | Evaluation of Proposals and Interviews |
| • August 12, 2014 | Council Authorization to Negotiate |
| • August 13 to August 29, 2014 | Contract Negotiations |
| • September 9, 2014 | Council Award of Agreement |

Staff developed an integrated City/USPTO team to develop the solicitation documents necessary to acquire the services of a D/B firm. The documents developed were as follows:

Request for Prequalifications

All D/B firms were prequalified through a process designed to limit proposals to only the most qualified firms who met criteria that included the following:

- Within the last 10 years the firm had constructed at least three (3) projects with an initial contract value over \$15 million and at least 50,000 gross square feet in size; and
- At least one project the firm constructed must have been a building or commercial interiors project that was federally-owned; and
- At least one project the firm constructed must have been a building or commercial interiors owned by a public firm and delivered on a fast track schedule using D/B; and
- A bonding capacity of at least \$15 million; and
- An excellent safety record.

Four D/B firms submitted requests for prequalification and all four were determined to be prequalified.

Request for Proposals

The next step was to evaluate the detailed proposals of how the D/B firms would approach the project. In general, the RFP follows standard City of San José format and requirements. The D/B process and the corresponding RFP being utilized to solicit proposals allow the use of qualification-based selection criteria rather than solely best value or lowest cost. The RFP contained a description of the selection process, the information required of proposers, the construction program, and the necessary forms for submitting a proposal. Proposers submitted information relative to their experience and qualifications as well as other goals the City has relative to small and local contracts, labor peace, and local subcontracting.

The selection criteria approved by Council on May 20, 2014, is summarized as follows:

- Project Specific Approach (20%)
- Delivery of Quality Projects on Time and within Budget (20%)
- Experience with Federal Agency Work (15%)

- Strategy for Stakeholder Participation (5%)
- Strategy for Local Subcontracting (5%)
- Labor Peace Plan (5%)
- Small and Local Business Preference (10%)
- Cost Proposal (20%)

ANALYSIS

Proposals were received by the City on July 14, 2014, and were evaluated by the selection panel with a ranking for each proposal as before mentioned, and the proposers were invited to present their proposals during an oral interview. The panel consisted of the following individuals representing diverse backgrounds and experience relevant to the USPTO Project:

Name	Represents	Position
David Sykes	City of San José	Director of Public Works
Barry Ng	City of San José	Acting Assistant Director of Public Works
Kim Walesh	City of San José	Director of Economic Development
John Hassett	US Patent and Trademark Office	Office of Administrative Services
Lisle Hannah	US Patent and Trademark Office	Office of Administrative Services
Kate Kurewicz	US Patent and Trademark Office	Office of Procurement
Rick Mangan	Sprinkler Fitters Local 483	Business Agent
Casey Beyer	Silicon Valley Leadership Group	Senior Advisor

Upon completion of the interviews held on July 21, 2014, the panel deliberated and ranked the proposals in accordance with the scoring criteria with the following result:

Proposer	Ranking
Turner Construction (with Gensler Architects)	1
Hensel Phelps Construction (with Fentress Architects)	2
Hunt Construction (with Steinberg)	3
C. Overaa Construction (with RMW Architects)	4

Turner Construction Company teamed with Gensler Architects was ranked first among the panel members. While all firms were well-qualified, the Turner Construction Company team distinguished itself from other proposers in the areas of Project Specific Approach, Quality Projects on Time and within Budget, and Experience. In addition, Turner Construction Company brought a highly experienced team to the project. Their team consists of a Senior Project Manager, Interior Design Director and Superintendent who have worked on Tenant Improvements for federally-owned and/or federally-leased building projects.

The Design-Build Ordinance and the RFP allow proposers an opportunity to object to this recommendation. Pursuant to the procedure described in the RFP, any proposer may submit to the Director of Public Works a written statement setting forth any objections to this recommendation on or before ten working days following the date of the notice to the proposers. Should any objections to this recommendation be submitted to the Director of Public Works prior to August 12, 2014, a supplemental staff report will be prepared describing our findings for the Council's consideration.

Compliance with Local Preference Ordinance

The City's Local Preference Ordinance for professional service contracts where price is not the determinative factor allows proposers to receive a five point credit if they are local. Local business enterprises that also qualify as small business enterprises are given an additional credit equal to five points. The Local Preference provisions were applied to this RFP.

Two of the proposers, Hensel Phelps Construction and Turner Construction, qualified for the local business preference adding five points to each of their scores. None of the proposers qualified as a small business. The additional points did not change the order of the rankings.

Process Integrity

Representatives from Public Works and USPTO worked to develop a process that was fair and transparent. The RFP was prepared in conformance with the Design-Build Ordinance. In addition, the RFP process followed integrity guidelines set forth by the Finance Department. All participants in the preparing, reviewing, and scoring of the RFP have signed conflict of interest statements.

The City employed a single point of contact strategy to ensure communication was consistent with all potential proposers. In addition, a web-based procurement tool (BidSync) was employed to answer questions and provide clarifications.

Contract Negotiations

The basis for the D/B contract is the exemplar agreement that was included in the RFP. Staff will negotiate the price for the design of the Project using the Cost Proposal and Design documents circulated with the RFP. In September, Council will consider approval of the negotiated D/B contract. It is likely to include fixed or lump sum price for profit and overhead. After contract approval, staff and the D/B firm will engage in an on-going design effort with design documents to be delivered at various stages of completion. The City will have the option at each design submittal to accept the guaranteed maximum price (GMP) to be proposed by the D/B firm for completion of remaining design and construction per each approved Task Order.

Included in this contract will be appropriate performance bonds, payment bonds, and project insurance. If the City and the D/B entity to which the City awards the contract cannot reach agreement on price for any project component at any stage, the City can complete the remaining

portion of the design for that project component and publicly bid and manage the project. Contract terms are subject to negotiation so it is possible the final contract is different from what is described in this report.

Contract provisions setting out the schedule for design development and sequencing of projects will also be negotiated during this period, and information regarding these contract provisions will be presented to Council in the memorandum for the contract approval in September.

EVALUATION AND FOLLOW-UP

A design-build construction contract will be presented to Council for approval in September.

PUBLIC OUTREACH/INTEREST

- ☐ Criterion 1: Requires Council action on the use of public funds equal to \$1,000,000 or greater. **(Required: Website Posting)**
- ☐ Criterion 2: Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ Criterion 3: Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

While this action does not meet the \$1,000,000 threshold under Criterion 1, this memorandum will be posted on the City's website for the August 12, 2014, Council agenda. If approved by the City Council, staff will begin negotiations with the D/B firm and work to validate the program within the \$10,500,000 budget.

COORDINATION

This staff report has been prepared in coordination with the City Attorney's Office.

COST SUMMARY/IMPLICATIONS

The recommended actions will not result in any costs to the City. Costs for the D/B contract will be discussed in the staff report when the contract is brought to the Council for approval in September.

HONORABLE MAYOR AND CITY COUNCIL

July 23, 2014

Subject: United States Patent and Trademark Office

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CEQA

Exempt, File No. PP14-031.

/s/

DAVID SYKES

Director of Public Works

For questions please contact Barry Ng, Acting Assistant Director of Public Works, at 408-535-8488.